

**IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF MISSISSIPPI
GREENVILLE DIVISION**

ALVITA BARNES

*as Sister and Administratrix of the Estate of
Michael Steven Young, Jr., Deceased*

PLAINTIFF

V.

NO.: 4:20-cv-173-DMB-JMV

**MISSISSIPPI DEPARTMENT OF
CORRECTIONS, et al.**

DEFENDANTS

ORDER

Before this court is the Plaintiff's Amended Motion for Extension of Time to Serve Additional Named Defendants and Amend Complaint for Twenty (20) days [46]. As explained further below, the motion is granted in part and denied in part.

Procedural History

On April 12, 2021, after a number stipulations of dismissals of original Defendants had been filed, an amended complaint was filed adding new Defendants, making, after a further stipulation of dismissal, the following the named defendants: Centurion of Mississippi, LLC ("Centurion") (previously served and answered), and newly added Marshal Turner, Juan Santos, Brenda Brown, Vickie L. Thomas, Fe Juvelyn Ibe, Antonio Del Castillo, Angela Womack, Tanisha Simmons, Cynthia Curtis, Davlicia Love, Juanita Thomas, Medical Staff John or Jane Does 1-15 and Correctional Officers John or Jane Does 1-15.

Pursuant to Rule 4(m) of Federal Rules of Civil Procedure, the Plaintiff had 90 days in which to serve the new defendants. Plaintiff failed to do so, but on the 91st day, on July 13, 2021, she filed a motion for 30 days additional time to serve them. [45]. Before that motion was ripe, on July 19, 2021, Plaintiff amended her motion to request, instead, 20 days from July 19, 2021, to serve the new defendants and also an additional 20-day extension of the existing deadline for filing

amendments to the pleadings set forth in the Case Management Order. [46]. On July 28, 2021, Centurion filed an opposition to the Plaintiff's motion for additional time to serve the new defendants and to amend the pleadings. [49].

Three days later, before a reply was due, the Plaintiff, Wyoma Ivy, died and on August 9, 2021, a motion to stay proceedings due to the noted death of the Plaintiff was filed by her counsel. [51]. On August 12, 2021, the court granted the unopposed motion, staying the action for the earlier of the filing of a motion to substitute or the expiration of 90 days from the date of the order. [52]. On February 24, 2022, the court granted the motion to substitute party. [70].

Law & Analysis

Rule 4(m) of the Federal Rules of Civil Procedure provides in relevant part that

[i]f a defendant is not served within 90 days after the complaint is filed, the court—on motion or on its own after notice to the plaintiff—must dismiss the action without prejudice against that defendant or order that service be made within a specified time. But if the plaintiff shows good cause for the failure, the court must extend the time for service for an appropriate period.

The Fifth Circuit has held that under Rule 4(m), while a court “must” grant an extension of time to serve process if a plaintiff establishes good cause for failure to serve, the court also has discretion to grant additional time absent a showing of good cause. *West v. Hill*, NO. 1:16-cv-156-HSO-JCG, 2017 WL 1822576 (S.D. Miss. May 5, 2017) (citing *Millan v. USAA General Indemnity Co.*, 546 F.3d 321, 325 (5th Cir. 2008)); *see also Thompson v. Brown*, 91 F.3d 20, 21 (5th Cir. 1996).

Here, the Plaintiff, though one-day late, requested a twenty-day extension to serve defendants citing “current court schedule” along with the “sheer volume of [d]efendants to be served, John and Jane Does to be identified.” Pl. Amended Mot. at 2. [46]. The Plaintiff also seeks an additional twenty (20) days in which to amend the complaint. *Id.*

In light of the circumstances of this case, including the fact that the motion for additional time to serve was late by only 1 day, the court will exercise its discretion and grant a modest extension under Rule 4 (m). The Plaintiff is **GRANTED** twenty (20) days from the date of this order in which to serve the additional defendants. The Plaintiff is also **GRANTED** twenty (20) days, thereafter- to expire on April 12, 2022 – to *move* to amend the complaint with a proposed amended complaint attached. Except as granted, the motion is **DENIED**.

SO ORDERED this, the 3rd day of March, 2022.

/s/ Jane M. Virden

UNITED STATES MAGISTRATE JUDGE